

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Samuel Christian,)	C/A No. 8:12-880-JFA-JDA
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Wayne McCabe; James Blackwell; and)	
Ladson Derosett,)	
)	
Defendants.)	
_____)	

The *pro se* plaintiff, Samuel Christian, brings this action pursuant to 42 U.S.C. § 1983, apparently alleging a violation of his due process rights at a prison disciplinary hearing regarding an escape charge. He also contends that the defendants were deliberately indifferent to his medical needs and seeks monetary damages.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation and opines that the plaintiff has failed to exhaust his administrative remedies and that the complaint should be summarily dismissed under 28 U.S.C. § 1915(e)(2)(B). The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was notified of his right to file objections to the Report and

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

Recommendation. The plaintiff filed timely objections to the Report.

As an initial matter, the Magistrate Judge notes that the plaintiff indicated on his complaint that he did *not* exhaust his administrative remedies, thus the Magistrate Judge recommends dismissal without prejudice.

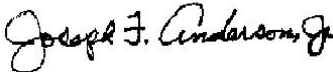
The plaintiff objects to the Magistrate Judge's Report asserting that he did prepare a step one grievance which the Warden denied. He contends that he then completed a step two grievance which he has not received back from the Warden. While he indicates the case numbers of the grievance forms, the plaintiff does not provide a copy in support of his assertion that he has exhausted his remedies. Moreover, it appears that the exhaustion procedures are incomplete as he has not received a response to his step two grievance. The Magistrate Judge explains the exhaustion procedure in her Report and Recommendation.

After carefully reviewing the applicable laws, the record in this case, the Report and Recommendation, and the objections thereto, this court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The Report is incorporated herein by reference.

Accordingly, this action is summarily dismissed without prejudice as the plaintiff has not exhausted his administrative remedies. Plaintiff's motion to appoint counsel (ECF No. 17) is denied.

IT IS SO ORDERED.

September 18, 2012
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge